

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER C. MYERS and DEPARTMENT OF THE ARMY,
ABERDEEN PROVING GROUND, Aberdeen, Md.

*Docket No. 96-2415; Submitted on the Record;
Issued August 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the appellant sustained a recurrence of disability as of May 11, 1993 causally related to his accepted June 15, 1989 lower back injury.

The present case, was before the Board on prior appeal. By order dated February 27, 1996, the Board granted the Director's motion to set aside and remand the Office's of Workers' Compensation Programs May 5, 1995 decision, finding that the one-year time period for requesting reconsideration expired. The Board remanded the case for further development so that the Office could consider the timely request for reconsideration and issue an appropriate decision on appellant's claim, for an alleged recurrence of disability due to an employment-related back condition under 20 C.F.R. § 10.138(b)(1).¹

To briefly summarize the facts in this case, appellant, a 55-year-old equipment operator, was servicing and pumping refrigeration oil in a compressor on June 15, 1989, when he suddenly experienced a sharp pain in his back, hip and knee. On July 13, 1989 appellant filed a Form CA-1 claim based on traumatic injury, seeking continuation of pay based on the alleged injury he sustained to his lower back due to the employment incident of June 15, 1989. The Office accepted appellant's claim for lumbosacral strain by letter dated September 26, 1989.

On May 13, 1993 appellant filed a CA-2 claim for recurrence of disability, alleging that on May 11, 1993 he experienced an exacerbation of his lower back pain, which he indicated had intermittently been giving him "sharp pains" since the occurrence of the June 15, 1989 employment injury.

Appellant subsequently submitted results from a magnetic resonance imaging (MRI) scan from Dr. Henry A. Young, a Board-certified neurosurgeon, dated July 7, 1993, plus reports dated July 19 and September 30, 1993. Dr. Young stated in the July 7, 1993 MRI report that appellant

¹ Docket No. 96-138 (issued February 27, 1996).

had a mild posterior bulge of the disc annulus at the L4-5 and L5-S1 level, with no evidence of disc herniation or any other pathological process in his lumbosacral spine. In his July 19 and September 30, 1993 reports, Dr. Young noted that appellant had some degenerative disc disease with osteoarthritic changes but no disc herniation, and stated that while he had some intermittent back and leg pains no operative intervention was warranted. Dr. Young also noted in his September 30, 1993 report that appellant had returned to work.

By decision finalized October 29, 1993, the Office denied appellant compensation for a recurrence of his accepted June 15, 1989, employment-related low back condition. In an October 20, 1993 memorandum accompanying the decision, an Office claims examiner found that appellant failed to submit medical evidence sufficient to establish that the claimed recurrence of disability as of May 11, 1993 was caused or aggravated by the June 15, 1989 employment injury. The claims examiner stated that Dr. Young did not relate the deterioration in appellant's lumbar disc to the accepted June 15, 1989, employment-related low back injury.

By letter to the Office dated October 12, 1994, appellant requested reconsideration of the Office's October 29, 1993 decision denying benefits. Accompanying the letter was a October 12, 1994 report, from Dr. Donald K. Wallace, Board-certified in preventive medicine. Dr. Wallace's letter, which was addressed to the claims examiner, stated that a 1989 MRI performed on appellant indicated that he had sustained a herniated disc, which was in contrast with the results of the July 7, 1993 MRI. Dr. Wallace noted that while the differences in interpretation had not been explained, the 1989 diagnosis of a herniated disc contradicted the Office's finding that appellant's 1989 injury was merely a lumbosacral strain.

Dr. Wallace further stated that a May 11, 1993 consultation note from Dr. Colin L. Kamperman, Board-certified in family practice and preventive medicine -- who had examined and treated appellant on the date of his alleged recurrence -- stated that appellant had sustained low back pain and ongoing back distress since his 1989 injury, with minimal sciatica on the right side. Dr. Wallace advised that Dr. Kamperman's note, together with the rest of the medical evidence in appellant's file, supported a conclusion that appellant's back injury resulted directly from the accepted June 15, 1989 employment injury.

In a decision dated May 5, 1995, the Office denied appellant's request for reconsideration, finding that appellant's request was untimely because the facts of the case indicated that his request letter was not written on October 12, 1994, as it indicated, and was not received by the Office until May 1, 1995.

In a letter dated October 3, 1995, received by the Board October 11, 1995, appellant's representative appealed the Office's most recent decision to the Board.

On January 16, 1996 the Director filed a motion to remand the Office's May 5, 1995 decision, contending that the Office did not retain the envelope, in which appellant's October 12, 1994 request for reconsideration was mailed and, therefore, had no documentary evidence that the request was untimely pursuant to 20 C.F.R. § 10.138(b)(2).

As discussed above, the Board granted the Director's motion in its February 27, 1996 order and remanded the case for further development so that the Office could consider the timely

request for reconsideration and issue an appropriate decision on appellant's claim; specifically, whether he had sustained a recurrence of disability due to an employment-related back condition.

In a decision dated April 17, 1996, the Office denied appellant's request for reconsideration, finding that the evidence submitted was not sufficient to warrant modification of its October 29, 1993 decision. In an accompanying memorandum, the Office found that Dr. Wallace's opinion did not contain sufficient rationale based upon objective medical findings to support a causal relationship between his accepted June 15, 1989 employment injury and his claimed back condition or disability as of May 11, 1993. The Office further stated that appellant failed to submit medical evidence explaining the conflicting medical evidence regarding the presence of a herniated disc, and failed to submit comprehensive medical evidence addressing appellant's employment activities following the June 15, 1989 employment injury and what effect, if any, this activity had on his back condition.

The Board finds that appellant has not sustained a recurrence of disability as of May 11 1993, causally related to the June 15, 1989 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.²

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his disability for work as of May 11, 1993 to his June 15, 1989 employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

The only medical evidence which appellant submitted was the October 12, 1994 medical report, from Dr. Wallace, which described appellant's complaints of back pain and generally indicated that his claimed back condition or disability as of May 11, 1993, resulted from his June 15, 1989 employment injury, but did not include a rationalized, probative medical opinion indicating that his claimed back condition or disability as of May 11, 1993, was caused or aggravated by the accepted June 15, 1989 employment injury.³

As there is no medical evidence addressing and explaining why the claimed condition and disability as of May 11, 1993 was caused or aggravated by his June 15, 1989 employment injury, appellant has not met his burden of proof in establishing that he sustained a recurrence of disability.

² *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

³ *William C. Thomas*, 45 ECAB 591 (1994).

The April 17, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 3, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member